

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JEFFREY P. BERTELSEN and AMY L.
BERTELSEN, husband and wife, and
the marital community comprised
thereof; BERTELSEN FOOD & GAS,
INC., a Washington corporation;
and DR. RICHARD BERTELSEN and
JANIS JO BERTELSEN, husband and
wife, and the marital community
comprised thereof,

Plaintiffs,

-vs-

ROGER K. HARRIS; ROGER K.
HARRIS, PC, an Oregon
Professional Services
Corporation; HARRIS BERNE
CHRISTENSEN, LLP, an Oregon
Limited Liability Partnership;
and RONALD E. MCPHERSON,

Defendants.

NO. CV-04-5135-LRS

**ORDER ON MOTIONS PENDING AS OF
JUNE 21, 2006**

BEFORE THE COURT are six motions filed by Plaintiffs and Defendants
in this case. On June 21, 2006, the Court held a hearing, heard
argument, and delivered oral rulings on the pending motions. This Order
is entered to memorialize and supplement the Court's oral rulings on that
day, which are incorporated herein by reference. For the reasons stated
on the record on June 21, 2006,

///

1 **IT IS HEREBY ORDERED:**

2 1. Plaintiffs' Motion for Partial Summary Judgment (**Ct. Rec. 63**)
3 is **DENIED**, as there are genuine issues of material fact, which preclude
4 summary judgment at this juncture. However, this Court has serious
5 concerns as to whether Plaintiffs' claims are barred by the statute of
6 limitations. See *Janiki Log and Const. Co v. Schwabe, Williamson and*
7 *Wyatt*, 109 Wn.App. 655 (2001). The issue is left for trial when a full
8 record will be developed.

9 2. Defendant's Motion for Summary Judgment Re: Jeff and Amy
10 Bertlesen's Fiduciary Duty Claims (**Ct. Rec. 47**) is **DENIED** as genuine
11 issues of material fact preclude summary judgment.

12 3. For the reasons stated on the record, Defendant's Motion to
13 Dismiss Dr. and Mrs. Bertlesen's Claims (**Ct. Rec. 54**) is **DENIED**.

14 4. Defendant's Motion to Dismiss Plaintiffs' Consumer Protection
15 Claims (**Ct. Rec. 43**) is **DENIED**, as genuine issues of material fact
16 preclude summary judgment at this juncture. However, it appears that
17 Plaintiffs Amy and Jeff Bertlesen may not be able to maintain a consumer
18 protection claim as they may not be able to satisfy the five elements.
19 See *Burbo v. Harley C. Douglass, Inc.*, 125 Wash.App. 684, 699-700 (2005).

20 To the extent Plaintiffs are asserting Washington State Consumer
21 Protection Act claims on behalf of Richard Bertlesen and Janis Jo
22 Bertelsen, Defendant's Motion for Summary Judgment is **GRANTED**.

23 5. Defendant's Motion to Strike the Declaration of John Strait (**Ct.**
24 **Rec. 74**) is **DENIED**. However, the Court only considered those portions
25 of the declaration that were admissible and properly before this Court.

26 ///

The District Court Executive is directed to file this Order and provide copies to counsel.

s/Lonny R. Suko

Order-3